Supreme Court, U. S.
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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1978.

No. 78-1880.

BOARD OF ASSESSORS
OF THE CITY OF BOSTON,
PETITIONER,

v.

NORMAN TREGOR, TRUSTEE,
RESPONDENT.

Respondent's Opposition to Petition for a Writ of Certiorari to the Supreme Judicial Court of the Commonwealth of Massachusetts.

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NORMAN TREGOR, TRUSTEE,
RESPONDENT.

Respondent's Opposition to Petition for a Writ of Certiorari to the Supreme Judicial Court of the Commonwealth of Massachusetts.

Introductory Statement.

The Respondent, Norman Tregor, Trustee of Broad Street Trust, opposes the Petition of the Board of Assessors of the City of Boston for a Writ of Certiorari to the Supreme Judicial Court of the Commonwealth of Massachusetts.

Opinion Below.

The opinion of the Supreme Judicial Court of the Commonwealth of Massachusetts, reported at page 770 of the 1979 Massachusetts Advance Sheets, is appended to the Petitioner's Petition as Appendix A, pp. 15 through 30, inclusive.

Jurisdiction.

The Petitioner claims jurisdiction under 28 U.S.C. § 1257. The Respondent denies that this Court has jurisdiction to grant a Writ of Certiorari thereunder as none of the requirements set forth in 28 U.S.C. § 1257(3) are present in this case.

Questions Presented.

Should the Petition for a Writ of Certiorari of the Board of Assessors of the City of Boston be denied because (i) even if a federal question were present, which there is not, the Petitioner does not have the standing to raise it, (ii) the case lacks any federal question which may be raised by the Petitioner, (iii) the decision below rests upon adequate and independent state grounds, (iv) the decision below gave full consideration to the issues presented and decided them correctly and fairly, (v) the Petitioner did not adequately raise a federal question in the forum below, and (vi) the issues involved in this case are not of national importance?

Constitutional Provisions and Statutes Involved.

As is manifestly clear from the decision of the Massachusetts Supreme Judicial Court appended to the Petition for Certiorari, Appendix A at pp. 15 through 30, inclusive, there are no issues in this case involving either the Constitution of the United States or any statutes of the United States.

Statement of the Case.

The Respondent, Norman Tregor, Trustee of the Broad Street Trust (hereinafter referred to as "Taxpayer"), during the year in question (1977) was the owner of an office building located at 33 Broad Street, in the City of Boston (hereinafter referred to as the "City"). For the fiscal year 1977, the City valued the subject property at $320,000 and assessed a tax thereon at the rate of $252.90 per thousand, or $80,828.00. The Taxpayer filed an Application for Abatement of Real Estate Taxes with the City which was deemed denied by operation of law on January 29, 1977.[1] The Taxpayer then filed a Petition Under Formal Procedure with the Appellate Tax Board of the Commonwealth of Massachusetts (the "Board") seeking an administrative resolution of his dispute with the City.[2]

Among the allegations raised by the Taxpayer before the Board in his Petition Under Formal Procedure was that Taxpayer's property was being assessed in a disproportional manner; i.e., that Taxpayer's property, which is commercial in character, was being assessed at a higher percentage of its fair cash value[3] than the City was as-

[1] Mass. G.L. c. 59, § 63.

[2] The Board is an administrative agency empowered by the Massachusetts legislature with quasi judicial powers to hear disputes involving the imposition of state and local taxes in the Commonwealth of Massachusetts. *See* Mass. G.L. c. 58A, § 1 et seq.

[3] Massachusetts assessors are under a mandate to assess real and personal property at its "fair cash valuation," Mass. G.L. c. 59,

sessing residential property. The City did not file any answer to the Taxpayer's Petition Under Formal Procedure, and, accordingly, the City, by law, admitted the foregoing allegations of disproportional assessment.[4]

The Board heard the Taxpayer's Petition Under Formal Procedure in two phases. The first phase dealt solely with the issue of the fair cash value of the Taxpayer's property. The parties stipulated that the Board would determine the fair cash value according to a formula based upon the capitalization of income method of valuation. Pursuant to said stipulation, the Board found that the fair cash value of the subject property for the year in issue was $328,000. This result is not now in issue.

The second phase of the hearing before the Board dealt with the issue of the remedy to be afforded to the Taxpayer, the City having admitted by Stipulation and by pleading that it had been assessing commercial property, including that of Taxpayer, at a higher percentage of fair cash value than single family dwelling units which was stipulated to be a substantial class of real property in the City and was referred to as the "lowest substantial class." The City and the Taxpayer stipulated that the ratio of assessment to fair cash value of the lowest substantial class for the year in issue was 26.8%. The Stipulation of the parties is set forth as Appendix A, pp. 14 through 21 (hereinafter referred to as the "Stipulation").

In the Stipulation the City and the Taxpayer further agreed that for the year in issue the average ratio of as-

§ 38, which is defined to mean "the price that an owner willing but not compelled to sell ought to receive from one willing but not compelled to buy." *Assessors of Quincy* v. *Boston Consolidated Gas Co.*, 309 Mass. 60, 63 (1941).

[4] Mass. G.L. c. 58A, § 7.

sessments to estimated fair cash value for all real and personal property located in the City was 50.2%.

Taxpayer argued that the assessment on his property should be reduced so that he would be taxed "proportionally" and would pay only his "fair share" as mandated respectively by the Constitution of the Commonwealth of Massachusetts (Pt. II, c. 1, § 1, Article 4; Article 10 of the Declaration of Rights). The Taxpayer further argued that the Massachusetts Constitution and Declaration of Rights afforded him a remedy and that this remedy, following prior decisions of the Supreme Judicial Court of Massachusetts, required that the Taxpayer has the right to have his assessment reduced to 26.8% of the fair cash value of Taxpayer's property — the same percentage of fair cash value as the assessment attributable to the lowest substantial class. The City conceded that the Taxpayer was entitled to a remedy but urged that the Taxpayer's assessment only be reduced to the City-wide average, or 50.2%. The City's arguments both before the Board and the Supreme Judicial Court were based on its own interpretation of the Massachusetts Constitution and on public policy arguments chiefly related to alleged economic impact on the City. All of the City's arguments, both before the Board and the Supreme Judicial Court were stated in the City's Brief submitted to the Supreme Judicial Court. A section of the City's Brief submitted to the Supreme Judicial Court containing all of the City's arguments and entitled Summary of the Argument is annexed as Appendix B at pp. 22 through 23, inclusive.

On June 30, 1978, the Board issued its Decision wherein the Board found as follows:

"Decision for the appellant. Assessed value $330,000.[5] Fair Cash Value as found by the board is $327,771, rounded to $328,000. The Disproportionate Assessment is 26.8%. The ultimate value is $87,904."

In the Memorandum which accompanied the Decision the Board stated:

"The 'appropriate theory of law,' in the opinion of the board, is that petitioner's assessment should be reduced to reflect the assessment/value ratio of the lowest substantial class. See *Board of Assessors of Weymouth* v. *Thomas E. Curtis & others, Trustees,* [Mass. Adv. Sh. (1978) 1676]; *Shoppers' World, Inc.* v. *Board of Assessors of Framingham,* 348 Mass. 366 at 377-378 n. 10."

On appeal, the Supreme Judicial Court affirmed the Board's Decision and applied the 26.8% ratio. Citing earlier Supreme Judicial Court decisions in *Assessors of Weymouth* v. *Curtis,* Mass. Adv. Sh. (1978) 1676 and *Kavet* v. *Board of Assessors of Watertown,* Mass. Adv. Sh. (1978) 2174, the Supreme Judicial Court said:

"Pursuant to the Constitution, our statutes require assessors to assess property at its 'fair cash valuation.' G.L. c. 59, § 38. Cf. G.L. c. 41, § 29 (assessors' oath). But 'illegal assessments have long been the rule rather than the exception throughout much of the Commonwealth.' *Sudbury* v. *Commissioner of Corps. & Taxation,* 366 Mass. 558, 563 (1974), and cases cited." Mass. Adv. Sh. (1979) at 773.

* * *

"The city does not now dispute the fact that the taxpayer is aggrieved by a disproportionate assessment. It contends only that the appropriate remedy is reduction of the taxpayer's assessment to a level proportional to the average of assessments of all classes of property through the city." *Id.* at 774.

[5] This figure was later corrected by the Board to $320,000.

* * *

"Use of the municipal average reduces the discrimination between those who do and those who do not seek abatements. But such discrimination is inherent in the abatement procedure, and the use of the municipal average affords only partial equalization between the favored taxpayer and the disfavored taxpayer. Suppose, for example, four taxpayers with properties of equal value. Two are residential and are unlawfully assessed at 25% of that value; two are commercial and are unlawfully assessed at 75%. A comprehensive remedy would reassess all at 100%; reassessment of all at the 50% average would produce the same tax, in the absence of some exemption. If one of the commercial taxpayers is granted an abatement to 50%, he is treated better than the other, but he is still a victim of discrimination in favor of residential property." *Id.* at 781.

Reasons for Denying the Writ.

1. The Petitioner Has No Standing to Raise a Federal Question, If, *Arguendo,* One Exists.

Even if a federal question were present in the instant case, which there is not (see argument No. 2 *infra*), the City has no standing to raise it. The City is not an aggrieved taxpayer. The City is not a member of any class allegedly discriminated against by state action. *Cf. Sioux City Bridge Co.* v. *Dakota County, Nebraska,* 260 U.S. 441 (1923). The reverse is true. It is the City, it-

self, which has wronged its taxpayer-residents and has created the conditions which necessitated the bringing of this case by Taxpayer. The Massachusetts Supreme Judicial Court's decision, below, is an attempt to right once and for all the wrongs perpetrated by the City on its taxpayers. The Taxpayer respectfully suggests that this Petition is motivated not by any concern which the City feels for its taxpayers, but is patently interposed for political reasons. The City seeks to limit the Taxpayer's remedy to a reduction in assessment to 50.2% of fair cash value which approximates the City-wide average assessment ratio. The City appears to argue in its Petition that those taxpayers whose properties are assessed above 26.8% of fair cash value will be denied equal protection, as they will be assessed in subsequent years, in part, to provide the funds which will be used to reimburse the Taxpayer. This argument ignores what is self-evident — that these taxpayers would, themselves, seek abatements of their real estate taxes based upon a lowering of their assessment to 26.8% rather than 50.2%. By its argument, the City does not redress the wrongs to these taxpayers; rather it compounds the wrongs by perpetuating them. The remedy which the Supreme Judicial Court granted in this case is a device for putting all taxpayers on an equal level. The remedy which the City seeks serves as an inducement to the City to continue to assess in a non-uniform manner, as those taxpayers whose properties are assessed above 26.8% but below 50.2% will never be entitled to any relief. The City cannot and does not speak for these aggrieved taxpayers but merely for itself.

2. The Case Lacks Any Federal Question Which May Be Raised by the Petitioner.

The Petitioner's argument, simply stated, appears to be that the remedy granted to the Taxpayer by the Supreme Judicial Court of Massachusetts denies equal protection to those taxpayers of the City not applying for an abatement for the year in issue who were assessed at a percentage of fair cash value above 26.8% because they will be disproportionately assessed in relation to the lowest substantial class (and Taxpayer after his abatement to 26.8%). The result of this, the City argues, is that these taxpayers will wind up paying higher real estate taxes in subsequent years to pay in part for the tax abatement refund granted to Taxpayer. The Petitioner's argument ignores the facts that (i) all other similarly situated taxpayers need only, themselves, apply for an abatement pursuant to the established procedures under Mass. G.L. c. 59, § 59; i.e., the "class" the Petitioner says is being denied equal protection may have the benefit of the Supreme Judicial Court's decision below merely by seeking to enforce a legal right available to all — filing at no cost a simple application with the City and (ii) as was rightly found by the Supreme Judicial Court, failure to reduce Taxpayer's assessment to 26.8% would only result in continued discrimination against Taxpayer and other taxpayers owning property assessed by the City at a ratio above the lowest substantial class. The City is silent as to what percentage it would urge as a remedy if every taxpayer being disproportionally assessed applied for an abatement. The relief given should be the same irrespective of the number of taxpayers making application for relief. If all those assessed above 26.8% of fair cash value petitioned for their just relief, the only remedy would be to lower everyone's assessment to the level of the lowest substantial class, thereby taxing everyone uniformly as mandated by the Constitution of the Commonwealth of Massachusetts.

The Petitioner also appears to argue that there is a federal question present in the instant case, simply be-

cause both in this case and in the case of *Sioux City Bridge Co.* v. *Dakota County, Nebraska,* 260 U.S. 441 (1923) a taxpayer sought a remedy on the basis of disproportional assessments. The *Sioux City Bridge Co.* case granted relief to the complaining taxpayer who was not afforded equal protection under the law. In the present case, the complaining Taxpayer was granted relief so as to conform with the principle "that where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law." *Id.* at 446. Thus, the decision of the Supreme Judicial Court in the instant case comports with the *Sioux City Bridge Co.* decision.

3. The Decision of the Supreme Judicial Court Rests upon Adequate and Independent State Grounds.

The decision of the Supreme Judicial Court clearly rests on State constitutional and statutory grounds. The Supreme Judicial Court's decision, following its earlier decisions,[6] is an attempt to clarify certain sections of the Constitution of the Commonwealth of Massachusetts, the Massachusetts Declaration of Rights and Mass. G.L. c. 59, § 38. No mention of any federal statute or the Constitution of the United States (other than indirectly through a reference to the *Sioux City Bridge Co.* decision) is made in the Supreme Judicial Court's decision, and, indeed, none was necessary, as there are adequate and independent state grounds which formed the basis of the decision. The City's Petition should, therefore, be denied. *See, e.g., Evans* v. *Abney,* 396 U.S. 435 (1970).

[6] *See, e.g., Board of Assessors of Weymouth* v. *Curtis,* Mass. Adv. Sh. (1978) 1676; *Kavet* v. *Board of Assessors of Watertown,* Mass. Adv. Sh. (1978) 2174; *Shoppers' World, Inc.* v. *Board of Assessors of Framingham,* 348 Mass. 366 (1965).

4. The Decision of the Supreme Judicial Court Was Proper, Based upon All of the Evidence and Reached a Fair Result.

The City in this case admitted and stipulated that it had been assessing property in the City for the year in issue and for many years prior thereto in an illegal, discriminatory and disproportional manner. The City further stipulated that there was a favored class of taxpayers, comprising the owners of single family residences, which was being assessed at 26.8% of fair cash value in contrast to commercial property owners, such as Taxpayer, who were being assessed at ratios much higher than 26.8%. This practice violated not only the Constitution of the Commonwealth of Massachusetts, the assessors' oaths of office and statutory mandates, but was also in direct and knowing contravention of a 1974 order of the Supreme Judicial Court in *Town of Sudbury* v. *Commissioner of Corporations and Taxation,* 366 Mass. 558 (1974). In affirming the Board's Decision abating Taxpayer's assessment to 26.8% of fair cash value, the Supreme Judicial Court was following its own established precedents[7] and was, further, effectively eliminating assessing inequalities by making it clear that all taxpayers are now entitled to be assessed uniformly and equally. To have adopted the City's ratio of 50.2% would have continued the illegal system of properties taxed by the City at different percentages of fair cash value. The Supreme Judicial Court rightly found that this is contrary to the Constitution and laws of the Commonwealth of Massachusetts. Further, even if the City's argument had been adopted by the Supreme Judicial Court, the very next year, Taxpayer would have been eligible to reapply for an abatement based upon the inequality between 50.2% and 26.8%, and

[7] Cases cited note 6, *supra.*

so on each year, until the Taxpayer's assessment was at or very near 26.8%. Thus the Supreme Judicial Court's decision eliminates the expense and time both for taxpayers and the Commonwealth's agencies and judiciary entailed in yearly appeals, by establishing the correct standard of relief upon the initial appeal.

5. The City Did Not Adequately Raise a Federal Question in the Court Below.

As can be seen from the Summary of the City's Argument in its Brief submitted to the Supreme Judicial Court, Appendix B at pp. 22-23, the questions raised below by the City either dealt with Massachusetts constitutional provisions, Massachusetts statutory law or public policy considerations within the lower Court's general equity jurisdiction. As the City did not raise any Fourteenth Amendment question or other federal question in the Court below, the City has waived its right to do so now. *See, e.g., Street* v. *New York,* 394 U.S. 576 (1969). This Court has jurisdiction to review the decision of the Supreme Judicial Court only if a federal ground was the sole basis of that decision or the Massachusetts Constitution was interpreted under what the Supreme Judicial Court deemed the compulsion of the Federal Constitution. *Mental Hygiene Dept. of California* v. *Kirchner,* 380 U.S. 194, 198 (1965).

6. The Issues Involved in This Case Are Not of National Importance.

The instant case involves a system of real estate taxation unique to Massachusetts as mandated by Massachusetts law and the Constitution of the Commonwealth of Massachusetts. It is true, as Petitioner states, that other states have also grappled with similar problems

of disproportional assessment. The constitutional and statutory provisions applicable in those states differ from those appertaining in Massachusetts. This Court has stated that a state's highest court is the best judge as to the interpretation of the state's constitution and statutes. *See, e.g., Albertson* v. *Millard,* 345 U.S. 242 (1953).

Conclusion.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Appendix A.

THE COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD

STIPULATION

Now come the parties in the above-entitled action and for the purposes of the consolidated trial before the Appellate Tax Board of these causes only, stipulate to the following facts, but subject always to Paragraph 4 hereof;

1.

The fair cash values of all real and personal property on the City of Boston subject to taxation in the City of Boston for each years 1970 through 1976 inclusive is as follows:

January 1, 1976	3.6 Billion
January 1, 1975	3.1 Billion
January 1, 1974	2.6 Billion
January 1, 1973	2.35 Billion
January 1, 1972	2.1 Billion
January 1, 1971	2.05 Billion
January 1, 1970	2.0 Billion

The fair cash value for all real or personal property in the even-numbered years — 1970, 1972, 1974 and 1976 were found by the Appellate Tax Board after an adversary hearing after a tax equalization proceeding held pursuant to the applicable statute. The values for the years 1971, 1973 and 1975, were arrived at by taking a median value of the two even-numbered years immediately preceding and following the year in question.

2.

The assessed values of all personal and real property of the City of Boston for each year is as follows:

Fiscal year 1977	1,765,000,000
Fiscal year 1976	1,793,473,000
Fiscal year 1975	1,784,200,000
½ year (start of Fiscal year) 1974	1,784,200,000
Calendar year 1973	1,742,200,000
Calendar year 1972	1,715,700,000
Calendar year 1971	1,681,500,000
Calendar year 1970	1,617,000,000

3.

The amount of the revenue raised by the property tax of the City of Boston for each of the years here involved is as follows:

Calendar year 1970	253,545,600
Calendar year 1971	293,758,050
Calendar year 1972	337,478,190
Calendar year 1973	342,690,740
½ year (start of Fiscal year) 1974	175,565,280
Fiscal year 1975	350,952,140
Fiscal year 1976	352,776,130
Fiscal year 1977	446,386,500

4.

If the hypothetical tax rate referred to in appellee's theory of law is determined by dividing the amount to be raised by the fair cash value of the City as stipulated in

Paragraph 1, then the hypothetical tax rates for the City for the years in question are as follows:

	Tax Levy	÷	Fair Cash Value	=	Tax Rate
FY 1977	446,386,500	÷	3.6 Billion	=	124.00
FY 1976	352,776,130	÷	3.1 Billion	=	113.80
FY 1974-75	350,952,140	÷	2.6 Billion	=	134.98
C 1973	342,690,740	÷	2.35 Billion	=	145.83
C 1972	337,478,190	÷	2.1 Billion	=	160.70
C 1971	293,758,050	÷	2.05 Billion	=	143.30
C 1970	253,545,600	÷	2.0 Billion	=	126.77

5.

The Commissioner of Corporations and Taxation, in only one year, 1976, determined the ratio of assessments to sale prices of various classes of real and personal property as follows:

Type of Property	Class **	Assessed Value *	Assessment Ratio	Estimated Full Valuation *
Real	R-1	176584	.268	658895
Real	R-2	114028	.380	300073
Real	R-3	106574	.622	171340
Real	R-4	214086	.477	448817
Real	RC	63581	.532	119513
Real	C	657110	.532	1235169
Real	I	174025	.576	302127
Real	A/H	74	1.000	74
Real	L	43399	.415	104576
	Total	1549461	.464	3340584

* in thousands
** See Exhibit A for definition of classes.

Type of Property	Class **	Assessed Value *	Assessment Ratio	Estimated Full Valuation *
Estim. 1976 increase		15404	1.000	15404
Personal Certified		94345	1.000	94345
Personal Other		149667	1.000	149667
Total		1808877	.502	3,600,000

* in thousands
** See Exhibit A for definition of classes.

For purposes of the above-named consolidated trial only, the parties stipulate and agree that the 1976 ratio of assessments to sale prices of various classes of property as reported by the Commissioner of Corporations and Taxation may apply with equal force in the years of 1970 through 1975 and 1977 inclusive.

6.

Petitioners do not stipulate that the facts set forth in Paragraphs 1 to 5, inclusive, are admissible, and specifically Petitioners object to the admissibility of such facts on the grounds of relevancy and materiality only. This Stipulation has been entered into by the Petitioners solely as a convenience to the City of Boston and the Appellate Tax Board to avoid lengthy time consuming hearings relating to facts which the Petitioners believe to be inadmissible on the grounds of relevancy and materiality. The facts stipulated are to be used, if admissible, solely with reference to the following legal issues raised by the City of Boston but denied by Petitioners:

I. That if the appropriate law is that the appellants' assessment should be reduced to reflect the assessment/value ratio of the lowest substantial class, the ratio of the lowest substantial class should be computed as the ratio of assessed value to fair cash value of the lowest substantial class after

that value has been adjusted because of the impact of additional taxes which would be imposed on that class if all property were assessed at fair cash value. The appellee claims that the assessment value/ratio is as set forth in Exhibit B which will be proved at trial.

II. That the appropriate procedure to compute an abatement is to determine the hypothetical tax rate if all property were assessed at fair cash value and apply that rate to fair cash value of the property as found by the Board and if this is the appropriate theory then the petitioners are entitled to an abatement equal to the difference between the tax paid and that which would have been paid if all property were assessed at fair cash value.

7.

The parties stipulate for all years in issue; namely, 1970 through 1977, inclusive, (i) that there were substantial classes of real property in the City of Boston assessed at varying percentages of fair cash value, and (ii) that there was a substantial class of real property in the City of Boston which was assessed at 26.8 percent of fair cash value. Only if the appropriate theory of law is that the petitioners' assessments should be reduced to reflect the assessment/value ratio of the lowest substantial class, this percentage, namely, 26.8 percent, should be applied to the Appellate Tax Board's determination of fair cash value for the years in issue in order to determine the assessed valuation of the Petitioners' property for the years in issue. The parties further stipulate that all other facts necessary in order to legally apply such percentage of 26.8 percent to the fair cash value in order to get the proper assessed value shall be deemed to have been proven by the petitioners.

The appellee objects to the relevancy and materiality of all the facts stipulated in this paragraph for the purposes

of computing an assessment/value ratio as set forth in this paragraph. However, if the Board shall find them relevant and material, they may be used for any purpose.

8.

Nothing contained in this stipulation shall preclude the Appellate Tax Board from making such findings as it deems necessary or proper based on all of the evidence presented at the trial of this action.

/s/ Arthur D. Altman
Attorney for all the petitioners

/s/ Walter H. McLaughlin
Special counsel for the City of Boston

Exhibit A

December 21, 1973

DEPARTMENT OF CORPORATIONS AND TAXATION
100 Cambridge Street, Boston, Massachusetts 02204

THE CLASSIFICATION SYSTEM REQUIRED TO BE USED BY JULY 1, 1974 TO IDENTIFY ALL PROPERTY SHOWN IN EACH CITY AND TOWN'S VALUATION BOOK.

A total valuation of each class must be shown at the end of the valuation book. (Chapter 671, Acts of 1973)

Choice of designation to be used in identifying each piece of property in the valuation book and in the sales reports

Class of Property	submitted under General Laws, Chapter 58, section 10. (use symbols of only one column)	
Residential — single dwelling unit	R1	or 1
Residential — double dwelling units	R2	2
Residential — triple dwelling units	R3	3
Residential — four dwelling units or more	R4	4
Residential/Commercial [1]	RC	5
Commercial [2]	C	6
Industrial [3]	I	7
Classified Agricultural/Horticultural land [4]	AH	8
Other Vacant Land	L	9

1. Residential/Commercial — Commercial property containing one or more dwelling units.
2. Commercial — Property used for retail, service, professional and similar activities.
3. Industrial — Property used for manufacturing, wholesaling and warehousing operations. Also special purpose structures such as fuel storage areas, power plants and telephone exchange buildings.
4. Classified Agricultural/Horticultural Land — Land for which the present use assessment provisions of Chapter 1118 of the Acts of 1973 applies.

Exhibit B

Step 1 — Actual tax levy on R1 properties by the City of Boston in FY 1977:

Total Assessed Value	x	Actual Tax Rate	=	Tax Levy
176,584,000		252.9		44,658,093

Step 2 — Tax Levy on R1 properties if they were assessed at full valuation in accordance with Exhibit #4 and were taxed according to the rate set forth for fiscal year 1977 in accordance with Exhibit #5:

Full Valuation	x	Tax Rate	=	Tax Levy
658,895,000		124.00		81,702,980

Step 3 — The difference between the taxes in Step 1 and Step 2:

$81,702,980
44,658,093
37,044,887

Step 4 — Expert evidence will be presented that the imposition of $1.00 in additional taxes on residential property will depreciate the value of that property by $10.00. Based on that assumption, the addition of taxes in Step 3 will cause a reduction in value of:

$37,044,887 x $10 = $370,448,870

Step 5 — The difference between Step 4 and the full valuation of R1's as set forth in Exhibit 4:

$658,895,000
370,448,870
288,446,130

Step 6 — The adjusted full valuation in Step 4 as a ratio of actual assessed values:

176,584,000 ÷ 288,446,130 = 61.2 percent

Appendix B.

SUMMARY OF THE ARGUMENT.

[from the Brief of the Board of Assessors of the City of Boston submitted below in Supreme Judicial Court No. 1615]

Because of the factual posture of this appeal, the parties have presented a clearly defined issue for the Court's review — an issue upon which the Court has commented but never ruled. The parties agree that property in the City is assessed below fair cash value. They also agree that the lowest substantial class of property subject to tax is assessed at 26.8% of it fair cash value. The Board has found that the common level of assessments for all taxable property is 50.2% of its fair cash value. The controversy concerns which percentage shall be applied to Tregor's fair cash value in calculating his abatement.

The City approaches this issue on several levels. First, the City argues that Article 10 of the Constitution of Massachusetts compels the use of the 50.2% figure. (p. 22) A fundamental requirement of the Constitution is that all property must be taxed proportionately. The only means of achieving proportionality is through the use of a common level of assessments. (p. 26) Thus, taxpayers will bear only their fair share of the tax burden.

Dicta in prior opinions can be read to indicate a partiality for selecting the lowest class theory of 26.8%. (p. 27) However, the City submits that the Court's language in the *Shoppers' World* and *Weymouth* cases, *supra,* which gave rise to an indication of support for the lowest class theory, is not controlling. (p. 27, 42) The Court has never been presented with a factual situation requiring a selection between the lowest class theory or the average class theory. (p. 32, 44) Thus, this language was dicta in those

cases and it should be disregarded in favor of the average class theory.

The decisions mentioned above have placed Massachusetts in a unique position. Leading decisions in other jurisdictions support the City's contention. (p. 55) Where equality, uniformity, and proportionality among taxpayers is required by constitutions or statutes, the means of achieving those ends are through the use of an average class theory. In cases where the lowest class theory was advanced, it was rejected by the courts. (p. 61) The decision of the Appeals Court in the *Chomerics* case, *infra,* reflects favorably on these decisions as being the better rule of law to achieve constitutionally imposed proportionality. (p. 51)

From an equitable standpoint, the adoption of the average class theory is the clearly preferred remedy. (p. 70) The City has already outlined the testimony of numerous witnesses who have accurately detailed the economic dislocation which would result from the implementation of a lowest class theory. In contrast, the only conceivable benefit to be derived from the lowest class theory is punishment. However, the punishment falls upon the wrong persons, serves no rational purpose, and produces the very result this Court has said the [Massachusetts] Constitution forbids. (p. 73)

In light of the [Massachusetts] Constitution, the law in other jurisdictions, and the overwhelming policy objectives, this Court must conclude that the Board erred in selecting the ratio of assessed value to fair cash value of the lowest substantial class as the basis for calculating Tregor's abatement.